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MEMO ENDORS

Office of the County Attorney

John M. Nonna
County Attorney

May 4, 2023

VIA ECF

Hon. Kenneth M. Karas, U.S.D.J.
United States District Court, S.D.N.Y.
300 Quarropas Street, Chambers 533
White Plains, NY 10601-4150

Re: *Kirton v. Westchester County Department of Corrections et al.*, 20-CV-10860

Dear Judge Karas:

This office represents the defendants in the above-captioned case. We respectfully request today's conference be adjourned to a date in June so that we can give notice to Auburn Correctional Facility ("Auburn") as soon as possible. A few hours before we were to appear, Auburn, a state run facility where the plaintiff is currently an inmate, advised that they were unable to accommodate the plaintiff to appear by telephone as it has only two telephones for over 900 inmates. Auburn has advised that it has limited telephone availability for the month of May, but, as of now, is available in June anytime except on Thursday, June 1st and Monday, June 5th.

We respectfully request a stay in defendants' time to answer or make a pre-answer motion to dismiss with regard to plaintiff's Second Amended Complaint, filed on April 26, 2023, until we have a conference with Your Honor. Defendants will not move to dismiss plaintiff's excessive force claim, as this claim is addressed by Your Honor in the Opinion & Order, dated March 21, 2023 (ECF No. 47). However, it is unclear whether plaintiff is again alleging a First Amendment retaliation claim and a *Monell* claim, despite stating previously that he is not suing Westchester County, just the individual officers. As a result, the need for a motion to dismiss may be obviated after a conference.

Lastly, we respectfully request that settlement be discussed with Your Honor at the conference as we have made a settlement offer to plaintiff and believe this case is ripe for settlement.

Respectfully Yours,

Francesca L. Mountain

Francesca L. Mountain, Esq.
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The conference is moved
to 6/26/23, at 10:00 Defendants'
time to Answer is stayed until
further order of the Court.

The Clerk of the Court is directed to
mail a copy of this Order to the Plaintiff

So Ordered
MK 5/9/23